

**ASSEMBLY BILL**

**No. 2004**

**Introduced by Assembly Member Wright**

February 18, 1998

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An act to amend Section 16583.5 of the Government Code, relating to the Student Aid Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 2004, as introduced, R. Wright. Accounts Receivable Management Act: Student Aid Commission: delinquencies: collection.

The Accounts Receivable Management Act requires the Student Aid Commission to enter into an interagency agreement with the Franchise Tax Board to collect all or part of the commission's outstanding accounts receivable in any manner authorized by law for the collection of a delinquent personal income tax liability including, but not limited to, issuance of an order for levy. Any information, information sources, or enforcement remedies and capabilities available to the commission are available to the board for purposes of collecting these delinquencies. The commission and board are required to provide notice to a debtor according to specified criteria, and the commission, the board, and the Controller are authorized to adopt regulations to implement these provisions.

This bill instead would require the Franchise Tax Board to collect all or part of the commission's outstanding accounts receivable in the manner authorized by law for the collection of a delinquent personal income tax liability pursuant to

issuance of an order for levy. It would delete the provision making information, information sources, or enforcement remedies and capabilities that are available to the commission available to the board for purposes of collecting the delinquencies. It would revise the criteria for referral for collection and the manner in which notice is given to a debtor by the commission and the board, and set forth requirements for hearing and judicial review regarding referrals. It would require the commission, the board, and the Controller to adopt regulations to implement these provisions.

The bill would provide for the payment of damages by the commission to the debtor if a referral is made without having first satisfied these provisions.

The bill would require the commission, prior to referring any delinquency to the board, to submit to the board for each delinquency referred, a statement, signed under penalty of perjury by the executive director of the commission, or his or her designee, certifying that specified conditions have been satisfied. By expanding the scope of the existing crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 16583.5 of the Government  
2 Code is amended to read:  
3 16583.5. (a) Notwithstanding any other provision of  
4 law, the Student Aid Commission shall enter into an  
5 interagency agreement with the Franchise Tax Board to  
6 collect all or part of the commission's outstanding  
7 accounts receivable.



(b) (1) The ~~Student Aid Commission~~ *commission* shall develop criteria and policy that would define when an account receivable is delinquent and thereby subject to collection by the Franchise Tax Board. For purposes of this section, at a minimum, “delinquent” means that all of the following conditions exist prior to referral to the Franchise Tax Board:

(A) The amount is due and payable.

~~(B) Notice of the amount due and payable was sent to the debtor at the last known address maintained by the Student Aid Commission.~~ *The commission has complied with all notice requirements of this section.*

~~(C) In the case of complaints or protests by the debtor, the debtor has been provided all required administrative hearings, and does not have a judicial proceeding pending with respect to that debt, protests, applications for loan discharge, or applications for reimbursement from the Student Tuition Recovery Fund under Article 12 (commencing with Section 94944) of Chapter 7 of Part 59 of Division 10 of Title 3 of the Education Code made by or on behalf of the debtor:~~

*(i) The debtor has been provided all required administrative hearings and appeals and there has been a final adjudication or resolution of the complaint, protest, or application that has not been appealed.*

*(ii) The debtor does not have a judicial proceeding pending against any party with respect to the loan at issue.*

(D) Notwithstanding Section 16584, the ~~Student Aid Commission~~ *commission* has referred the account to a private debt collector and, not less than nine months following that referral, the private debt collector has been unable to collect the account *and the private debt collector has not refused the debtor’s request to make reasonable and affordable payments on the loan. For purposes of this section, a determination of whether a payment is reasonable and affordable shall include a consideration of the debtor’s and spouse’s disposable income and reasonable and necessary expenses, including, but not limited to, housing, utilities, food,*

1 *medical costs, work-related expenses, dependent care*  
2 *costs, and repayment of other student loans.*

3 *(E) The debtor has been offered the option of making*  
4 *payments on the debt in monthly payments that are*  
5 *reasonable and affordable for the debtor and has received*  
6 *an explanation of the availability of other options for*  
7 *curing the delinquent account, including, but not limited*  
8 *to, obtaining a consolidation loan under the federal*  
9 *Higher Education Act of 1965 (Public Law 89-329), as*  
10 *amended.*

11 *(F) In the case of a debtor who was involuntarily*  
12 *separated from employment, the debtor has been*  
13 *continuously reemployed in the 12 months preceding*  
14 *referral to the Franchise Tax Board.*

15 *(2) This policy and criteria may include a minimum*  
16 *dollar threshold for delinquencies that would be referred*  
17 *to the Franchise Tax Board.*

18 *(c) Prior to referring any delinquent account that*  
19 *relates to a student loan to the Franchise Tax Board, both*  
20 *of the following shall occur:*

21 *(1) (A) At least 60 days prior to the referral to the*  
22 *Franchise Tax Board, the commission shall provide actual*  
23 *notice to the debtor, written in simple language in*  
24 *English and Spanish, at the debtor's current address, of at*  
25 *least the following information:*

26 *(i) Amount of the debt.*

27 *(ii) That the debt is about to be referred to the*  
28 *Franchise Tax Board.*

29 *(iii) The debtor's rights and remedies, including, but*  
30 *not limited to, all of the following:*

31 *(I) The debtor's right to request documents.*

32 *(II) The debtor's right to object to the referral and*  
33 *have a hearing on the objection, and the date by which*  
34 *an objection must be made.*

35 *(III) A listing of the available defenses to repayment*  
36 *available to the debtor.*

37 *(IV) The debtor's right to appeal.*

38 *(V) The debtor's right to seek judicial review.*

39 *(VI) The debtor's right to be represented by counsel*  
40 *or other advocate.*

1 (B) A form shall accompany the notice described in  
2 this paragraph, to allow the debtor to object to the  
3 proposed referral. The form shall contain both of the  
4 following:

5 (i) Descriptions of the defenses to repayment of the  
6 student loan and checkoff spaces where the debtor may  
7 indicate which defenses are applicable to the debtor. The  
8 list of available defenses shall include, but not be limited  
9 to, the defenses listed by the commission on “request for  
10 review” forms supplied as part of the federal tax offset  
11 process administered by the commission.

12 (ii) A description, written in simple language in  
13 English and Spanish, of the debtor’s right to object to the  
14 referral and have a hearing on the objection, the date by  
15 which an objection must be made, the right to appeal, the  
16 right to seek judicial review, and the right to be  
17 represented by counsel or other advocate.

18 (C) The notice described in paragraph (1) shall also be  
19 accompanied by a list of organizations that provide free  
20 legal services in the debtor’s area and that may be able to  
21 assist the debtor.

22 (2) The commission shall submit to the Franchise Tax  
23 Board for each delinquency referred, a statement, signed  
24 under penalty of perjury by the executive director of the  
25 commission, or his or her designee, certifying that all of  
26 the provisions of paragraph (1) of subdivision (b) have  
27 been satisfied for that debt.

28 (d) (1) If the debtor objects to the referral, the  
29 commission shall provide a hearing, which at the debtor’s  
30 option may be written or oral. An oral hearing may, at the  
31 debtor’s option, be either in person or by telephone. The  
32 time and location of any oral hearing shall be set by the  
33 commission, provided that any in person hearing shall be  
34 in the county in which the debtor resides. All telephonic  
35 charges shall be the responsibility of the commission. If  
36 the debtor does not select a type of hearing, the hearing  
37 shall be an oral, in-person hearing in the county in which  
38 the debtor resides.

39 (2) If the debtor’s objection to the referral is  
40 postmarked or, if not postmarked, is received by the

1 commission on or before the 30th day following receipt by  
2 the debtor of the notice described in paragraph (1) of  
3 subdivision (c), the commission shall not refer the  
4 account to the Franchise Tax Board until the debtor has  
5 been provided with a hearing on the debtor's objection  
6 and all administrative or judicial review rights following  
7 any decision adverse to the debtor have been exhausted.  
8 For purposes of this section, it shall be presumed that the  
9 debtor received the notice five days after it was mailed by  
10 the commission in the absence of evidence to the  
11 contrary.

12 (3) If the debtor's objection to the referral is  
13 postmarked or, if not postmarked, is received by the  
14 commission after the 30th day following receipt by the  
15 debtor of the notice described in paragraph (1) of  
16 subdivision (c), the commission shall afford the debtor a  
17 hearing and all other administrative or judicial review  
18 rights, but may refer the account to the Franchise Tax  
19 Board prior to the time that the debtor has been provided  
20 with a hearing on the debtor's objection.

21 (4) If the debtor shows good cause to the commission  
22 that the debtor's delay in filing the objection after the  
23 30th day following receipt by the debtor of the notice  
24 described in paragraph (1) of subdivision (c) was caused  
25 by factors over which the debtor had no control or was  
26 caused by mistake, inadvertence, or excusable neglect,  
27 paragraph (2) shall apply, and paragraph (3) shall not  
28 apply.

29 (5) The commission shall offer the debtor the  
30 opportunity to inspect and copy its records related to the  
31 debt at its expense prior to any hearing.

32 (6) The hearing to be provided to the debtor shall be  
33 conducted by a hearing officer trained in dealing with  
34 legal issues and shall not be under the supervision or  
35 control of the executive director of the commission. The  
36 hearing officer shall receive no pay, bonus, or incentive  
37 based on the officer's denial of debtors' claims. Nothing  
38 in this paragraph shall prevent the commission from  
39 contracting with the Office of Administrative Hearings to  
40 provide those services.



1 (7) *The hearing officer shall issue a final written*  
2 *decision on the debtor's objection no later than 60 days*  
3 *following the commission's receipt of a debtor's request*  
4 *for a written hearing or no later than 30 days following*  
5 *any oral hearing, whether in person or by telephone,*  
6 *which shall be served on the commission and the debtor.*

7 (8) *The debtor may seek review of the hearing*  
8 *officer's decision through an administrative adjudication*  
9 *conducted pursuant to Chapter 5 (commencing with*  
10 *Section 11500) of Part 1 of Division 3.*

11 (9) *Notwithstanding any other provision of law, the*  
12 *debtor may seek judicial review of an adverse decision in*  
13 *an administrative adjudication conducted pursuant to*  
14 *paragraph (8) within six months of the last day on which*  
15 *reconsideration of the decision can be ordered. In*  
16 *determining whether the findings made in the*  
17 *adjudication are supported by the evidence, the court*  
18 *shall exercise its independent judgment on the evidence.*

19 (e) When a delinquency is referred to the Franchise  
20 Tax Board pursuant to this section, the amount of the  
21 delinquency and any interest on the delinquency or other  
22 amounts that accrued prior to or accrue subsequent to the  
23 date of referral, shall be collected by the Franchise Tax  
24 Board in ~~any~~ *the* manner authorized under the law for  
25 collection of a delinquent personal income tax liability;  
26 ~~including, but not limited to, pursuant to~~ issuance of an  
27 order and levy under Article 4 (commencing with  
28 Section 706.070) of Chapter 5 of Division 2 of Title 9 of  
29 Part 2 of the Code of Civil Procedure in the manner  
30 provided for earnings withholding orders for taxes and  
31 including entering into agreements as authorized by  
32 Sections 19376 and 19377 of the Revenue and Taxation  
33 Code.

34 ~~(d)~~

35 (f) (1) Any law providing for the collection of a  
36 delinquent personal income tax liability, including Part  
37 10.7 (commencing with Section 21001) of Division 2 of the  
38 Revenue and Taxation Code, which includes Section  
39 21021 of the Revenue and Taxation Code relating to the  
40 awarding of damages for reckless disregard of

1 procedures, shall apply to delinquencies referred under  
2 this section in the same manner and with the same force  
3 and effect and to the full extent as if the language of the  
4 law had been incorporated in full into this chapter, except  
5 to the extent that any provision is either inconsistent with  
6 this chapter or is not relevant to this chapter.

7 ~~(e)–~~

8 *(2) If the commission refers any account to the*  
9 *Franchise Tax Board without having first satisfied all the*  
10 *requirements of this section, it shall be liable to the debtor*  
11 *for actual damages, statutory damages not to exceed one*  
12 *thousand dollars (\$1,000) per violation of this section,*  
13 *attorneys' fees, and costs.*

14 *(g) The Franchise Tax Board shall provide actual*  
15 *notice to the debtor at the ~~most recent address of record~~*  
16 *or last known address that payment by the debtor of the*  
17 *amount due within a certain timeframe, which at a*  
18 *minimum shall be 10 days after the date of the notice,*  
19 *shall prevent further collection action debtor's current*  
20 *address of the amount due, of the specific collection*  
21 *action about to be taken, and that payment by the debtor*  
22 *of the amount due within a certain timeframe, which at*  
23 *a minimum shall be 60 days from the date of the notice,*  
24 *or the arrangement of a reasonable and affordable*  
25 *payment schedule with the commission during the same*  
26 *period, shall prevent further collection action.*

27 ~~(f) Any information, information sources, or~~  
28 ~~enforcement remedies and capabilities available to the~~  
29 ~~Student Aid Commission shall be available to the~~  
30 ~~Franchise Tax Board for purposes of collecting~~  
31 ~~delinquencies referred under this section.~~

32 ~~(g)–~~

33 *(h) Any agreement entered into pursuant to*  
34 *subdivision (a) shall include all of the following:*

35 *(1) The criteria, standards, and procedures for*  
36 *referring the delinquencies to the Franchise Tax Board*  
37 *for collection pursuant to this section.*

38 *(2) A statement that the delinquencies referred to the*  
39 *Franchise Tax Board are delinquent, as defined by the*  
40 ~~Student Aid Commission~~ *commission* under paragraph



1 (1) of subdivision (b), and subject to collection by the  
2 Franchise Tax Board.

3 (3) A statement that in the event a person whose  
4 delinquency is referred under subdivision ~~(e)~~ (e) notifies  
5 the Franchise Tax Board that there is a disagreement as  
6 to the amount due subject to collection, the Franchise Tax  
7 Board may, upon notification by that person, refer the  
8 person to the ~~Student Aid Commission~~ *commission*,  
9 return the account to the ~~Student Aid Commission~~  
10 *commission*, or rescind any collection action that may  
11 have been taken. No account that is returned pursuant to  
12 this subdivision shall be again referred as a delinquency  
13 unless the delinquency has been reduced to a judgment  
14 or is an enforceable lien, if required to satisfy due process  
15 requirements.

16 (4) A statement that the Franchise Tax Board's  
17 departmental costs attributable to the delinquencies  
18 referred pursuant to this section shall be reimbursed from  
19 a percentage of the referred delinquencies collected by  
20 the Franchise Tax Board not to exceed 15 percent of the  
21 amount collected by the Franchise Tax Board on behalf  
22 of the ~~Student Aid Commission~~ *commission*.

23 (5) A statement that the debtor may be allowed an  
24 opportunity to voluntarily enter into an installment  
25 payment agreement as provided under Section 19008 of  
26 the Revenue and Taxation Code.

27 ~~(h)~~

28 (i) For purposes of this section, "departmental costs  
29 attributable to the accounts referred under subdivision  
30 ~~(e)~~" *(e)*" means the Franchise Tax Board's costs incurred  
31 to administer, maintain, and support the collection of  
32 delinquencies referred to the Franchise Tax Board  
33 pursuant to this section. These costs shall not include  
34 development and implementation costs that shall be  
35 repaid under a separate agreement between the ~~Student~~  
36 ~~Aid Commission~~ *commission* and the Franchise Tax  
37 Board as provided by statute.

38 ~~(i)~~

39 (j) The activities required to implement and  
40 administer this section shall not interfere with the

1 primary mission of the Franchise Tax Board to administer  
2 Part 10 (commencing with Section 17001), and Part 11  
3 (commencing with Section 23001), of Division 2 of the  
4 Revenue and Taxation Code.

5 ~~(j)~~

6 (k) Delinquencies referred to the Franchise Tax  
7 Board for collection pursuant to this section shall accrue  
8 interest in an amount computed by the ~~Student Aid~~  
9 ~~Commission~~ *commission*, as permitted by law.

10 ~~(k)~~

11 (l) In no event shall amounts collected pursuant to this  
12 section be construed to be an income tax delinquency. In  
13 the case of a bankruptcy action, any delinquency referred  
14 under this section shall not be construed to be an income  
15 tax delinquency.

16 ~~(l)~~

17 (m) The Franchise Tax Board, ~~Student Aid~~  
18 ~~Commission~~ *the commission*, and ~~the~~ Controller ~~may~~  
19 *shall* each adopt regulations to implement the  
20 delinquency referral program authorized by this section  
21 in accordance with Chapter 3.5 (commencing with  
22 Section 11340) of Part 1 of Division 3. The initial adoption  
23 of any emergency regulations after January 1, 1997, shall  
24 be deemed to be necessary for the immediate  
25 preservation of the public peace, health and safety, or  
26 general welfare.

27 ~~(m)~~

28 (n) *All references to the Student Aid Commission or*  
29 *the commission in this section are intended to include and*  
30 *shall apply to the Student Aid Commission and to any*  
31 *auxiliary organization established pursuant to Article 2.5*  
32 *(commencing with Section 69552) of Chapter 2 of Part 42*  
33 *of Division 5 of Title 3 of the Education Code.*

34 (o) This section shall remain in effect only until  
35 January 1, 2002, and as of that date is repealed, unless a  
36 later enacted statute, that is enacted before January 1,  
37 2002, deletes or extends that date.

38 SEC. 2. No reimbursement is required by this act  
39 pursuant to Section 6 of Article XIII B of the California  
40 Constitution because the only costs that may be incurred

1 by a local agency or school district will be incurred  
2 because this act creates a new crime or infraction,  
3 eliminates a crime or infraction, or changes the penalty  
4 for a crime or infraction, within the meaning of Section  
5 17556 of the Government Code, or changes the definition  
6 of a crime within the meaning of Section 6 of Article  
7 XIII B of the California Constitution.

8 Notwithstanding Section 17580 of the Government  
9 Code, unless otherwise specified, the provisions of this act  
10 shall become operative on the same date that the act  
11 takes effect pursuant to the California Constitution.

